

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:15-cv-00136-FDW-DSC

FRANCISCO AVOKI d/b/a DRIVE4LESS,)
)
Plaintiff,)
)
vs.)
)
LARRY EUGENE FEREBEE, DONALD)
ALAN FRAYLEY, LILLIE FRAYLEY)
AND DOES I-XX,)
)
Defendants.)
_____)

NOTICE

THIS MATTER is before the Court on Plaintiff's "Notice of Motion and Motion to Vacate Order Setting Reply on April 20, 2015 . . .," (Doc. No. 8), filed on May 7, 2015. In sum, Plaintiff, who appears *pro se* in this matter, seeks an extension of time to respond to Defendants' pending Motion to Dismiss (Doc. No. 4). Plaintiff argues additional time is warranted because he changed his mailing address during the pendency of this action, and he did not receive Defendants' motion or the Court's notice advising him of the obligation and deadline to respond to Defendants' motion (Doc. No. 6) until after the deadline to respond had lapsed. By response filed May 14, 2015, Defendants oppose the instant motion for an extension of time (Doc. No. 9).

The Court hereby finds excusable neglect sufficient to warrant a short extension of time for Plaintiff to respond, particularly in light of the fact that a favorable ruling on Defendants' motion could be dispositive of Plaintiff's claims. The Court need not "vacate" its prior order as requested by Plaintiff; therefore that portion of Plaintiff's motion is denied. Instead, liberally construing the *pro se* pleading, the Court shall grant the ultimate relief sought by Plaintiff and allow an extension of time *nunc pro tunc* from the prior deadline. **Plaintiff shall have until**

Tuesday, May 26, 2015, to file any response or exhibits to support his opposition to Defendants' motion to dismiss. The Court will not grant any further extensions of time for Plaintiff to respond to Defendants' motion to dismiss.

In granting this extension, the Court hereby cautions Plaintiff that failure to timely respond to further motions and deadlines in this matter could result in dismissal of the Complaint or other consequences that could prove dispositive to Plaintiff's claims. Plaintiff is further advised to promptly inform the Clerk and opposing counsel of any change in address so that service of pleadings in this case can occur. Failure to do so may be deemed a failure to prosecute under Rule 41 of the Federal Rules of Civil procedure and could warrant dismissal of this action.

IT IS THEREFORE ORDERED that Plaintiff's Motion (Doc. No. 8) is GRANTED IN PART AND DENIED IN PART as set forth herein.

IT IS SO ORDERED.

Signed: May 14, 2015

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

